No. 90-1623 (2)

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1990

S. E. JOHNSON COMPANY, *et al.*,
Petitioners,

vs.

ARTHUR S. LANGENDERFER, INC., *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The Sixth Circuit Court of Appeals reversed unanimous jury verdicts in favor of the antitrust plaintiffs *for the second time* in the fifteen-year history of these cases: *Langenderfer I,* 729 F.2d 1050; and *Langenderfer II,* 917 F.2d 1413. The plaintiffs in the trial

court have filed their own Petition for Writ of Certiorari in this Court to obtain review of shocking and unprecedented action by a Court of Appeals in *sua sponte* reversing verdicts on issues that were never before it and were never preserved in the trial court and in retrying the facts *de novo* in violation of the Seventh Amendment. Plaintiffs' Petition for Certiorari is docketed as Case No. 90-1581 and was filed on April 12, 1991. Defendants (petitioners herein) have waived a response to plaintiffs' petition.[1] The serious issues presented by plaintiffs' petition for certiorari in Case No. 90-1581 do indeed require the review and supervision of the Supreme Court in its responsibility over Courts of Appeals and that petition for certiorari should be granted.

The defendants (petitioners herein) now seek to avoid the minor reduced judgment of the Sixth Circuit after it ravaged the jury verdicts and trial court action in *Langenderfer II.* The questions presented here are nothing new and the reasons given for granting the writ are meritless. This Court should deny defendants' petition for certiorari but grant the plaintiffs' petition in Case No. 90-1581.[2]

We respectfully refer the Court to the Statement of the Case contained in Case No. 90-1581 for a full and fair summary of the proceedings and evidence below which is incorporated herein by reference.

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[1] See letter from Merritt Neal Rains to Hon. William K. Suter, Clerk of the Supreme Court, dated May 10, 1991 wherein "respondents waive their right to file a brief in opposition" to the Petition for Certiorari in Case No. 90-1581. Given the admissions implicit in defendants' waiver, we trust the Court would not grant certiorari on the instant petition without likewise granting certiorari in Case No. 90-1581.

[2] References to the Appendix ("A_____") are to plaintiffs' Petition for Certiorari in Case No. 90-1581.

SUMMARY OF THE ARGUMENT

Defendants mislead the Court in persisting in their attempt to convert *Langenderfer II* into a predatory pricing case. It was not—it was a monopoly case under Sherman §2. The jury found that defendants monopolized and attempted to monopolize asphalt paving of Turnpike (OTC) and State (ODOT) highway paving contracts and construction materials supplied thereon in thirteen counties of Northwestern Ohio over a thirteen-year period (1972-85) (Jury's Ans. to Itgs., A74-84). The monopoly is intact today.

The jury found that defendants had obtained their monopoly power through thirteen acquisitions which wiped out independent competition in the supply of highway construction materials and eliminated five ODOT asphalt paving competitors (*Id.* A81). As a result of these acquisitions, defendants monopolized between 75% and 85% of Turnpike paving and 58% of OTC/ODOT paving over thirteen years (PX 69SA, 71A, C). This was fully supported by the evidence as the jury found in its answers to eighteen special interrogatories (with sixty subparts) as drafted by the defendants (A74-84). The trial court denied defendants' motion for *j.n.o.v.* or a new trial holding the jury's findings were fully supported by the evidence (A91-97).

Defendants' Petition[3] herein filed on April 22, 1991 by S. E. Johnson Company, *et al.* ("Johnson") for a Writ of Certiorari should be denied. Johnson continues to beg the very fact questions determined by two successive unanimous juries as if those issues had been undisputed and decided in Johnson's favor. The *Langenderfer II* jury found squarely against Johnson on every material issue, including "the likelihood that new competitors would enter the market if defendants were to attempt to raise prices" on which they were fully instructed (JA 208).[4] Plaintiffs' experts testified that there was no likelihood of new competition given the degree of defendants' control (JA 2644-52, 2837-41; TR 2878-86, TR 3350-54). Johnson continues to miscast this as a predatory pricing case,[5] but the evidence disclosed an ill-gotten, self-perpetuating monopoly obtained through acquisitions in violation of Sherman §2.

---

[3] Defendants below, S. E. Johnson Company, *et al.* filed their Petition for Certiorari on April 22, 1991, nine days after plaintiffs Langenderfer, *et al.* filed their Petition for Certiorari in Case Number 90-1581.

[4] *See, e.g.*, Johnson's Question Presented No. 1. The juries saw numerous exhibits (*e.g.*, PX 16) and heard more than a dozen fact and expert witnesses called by plaintiffs to testify on the question of whether competitors had entered or fled the market, and was fully instructed on the issue (JA 208).

[5] See Johnson's Question Presented No. 2.

REASONS FOR DENYING THE WRIT

I. Johnson's Petition Falsely Describes The Evidence At Trial And The Proceedings On Appeal.

Johnson's Statement of the Case reads like its final argument which failed to persuade the jury. In fact, the evidence did *not* show "no barriers to entry," "less efficient competitors," "invitations" to rig bids, "new entry" or "increased" competition (Petition pp 3-4, 7), but just the opposite. Johnson is ignoring the evidence and the jury's findings.[6] It is illuminating that *none* of Johnson's fact assertions are accompanied by record citation.[7] Of course, plaintiffs' evidence showed high barriers to entry (JA 908, 1430-34; TR 347, 1206-10), lack of entry, competitors abandoning the market altogether or avoiding bidding because of Johnson (PX 16; JA 797, 833, 925-34, 1044-57, 1097, 1540, 1726, 1737-42, 1808, 1850, 1967-97, 2186, 2312-15, 2405-06, 2418, 2428, 2481, 2573, 2644-51, 2685-88, 2837-40, 3123; TR 226, 262, 347, 403-32, 620-33, 721, 1206-10, 1400, 1638, 1649-54, 1755, 1807, 2011-42, 2240, 2365-68, 2470-71, 2483, 2493, 2594, 2639, 2878-85, 2943-66, 3350-53, 3762-65) equally efficient competitors (*e.g.*, JA 1536, 1744; TR 1396, 1656), which evidence defendants disputed, and, far from an "invitation to collude," only a desperate plea from Langenderfer's president to Johnson to stop its ruthless, anticompetitive behavior (JA 895, 1005, 2259; TR 330, 570, 2312) which was running Langenderfer out of business and which defendants succeeded in doing by 1978.

---

[6] This is not surprising because Johnson got away with it in the Court of Appeals where it received a trial *de novo* without regard to the jury's findings. See Sixth Circuit Opinion in *Langenderfer II* (917 F.2d 1413; A1-72).

[7] Johnson's statement (Petition at 5, n.3) that "the stated facts, all based on respondents' [plaintiffs'] evidence are not disputed" is false and misleading.

Johnson's Petition (p. 5) avoids the real reason the Sixth Circuit remanded *Langenderfer I* for a second trial (729 F.2d at 1058):

> Since Langenderfer premised its allegation of anticompetitive conduct almost entirely on the claim of predatory pricing and since the jury was not required to return special interrogatories, we cannot discern whether the jury verdict was based on the legally insufficient proof of predatory pricing or on the other allegations of anticompetitive acts. Consequently, we must vacate the judgment below and remand for new trial.

Notwithstanding the Sixth Circuit's misconception that the first trial was based "almost entirely" on predatory pricing, that was a non-issue in *Langenderfer II*. Predatory pricing was excluded *in limine* at the second trial (JA 176)[8], ensuring that the jury consider only "the other allegations of anticompetitive acts."

The second jury satisfied the Sixth Circuit's concern for precision by returning 18 answers to special interrogatories (with 60 subparts), all in plaintiffs' favor, even though they had been drafted by Johnson's counsel. The jury not only found monopoly power and a dangerous probability of achieving same, but anticompetitive conduct across the board, with no reference to predatory pricing.

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[8] Predatory pricing was not mentioned at the second trial. Indeed, the trial court expressly told the jury: "I instruct you that defendants' profitable bidding does not constitute anticompetitive conduct as a matter of law, and you may not base a verdict on the fact that defendants were able to bid lower than competitors and still make a profit." (Court's Chg. at JA 218, 3815; TR 4950). The Sixth Circuit in *Langenderfer II* held that this instruction cured improper inferences that might otherwise have been drawn by the jurors about low bidding (917 F.2d at 1440; A53). The jury is presumed to follow the court's instructions. *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585, 604 (1985).

The Sixth Circuit's findings on the second appeal, on which Johnson relies (Petition p. 6) are based on that Court's *de novo* weighing of the evidence, not the jury's findings, and are the subject of the petition for certiorari filed by plaintiffs and pending in Case No. 90-1581, where plaintiffs maintain that the Court of Appeals flagrantly re-examined facts found by the jury in violation of the Seventh Amendment to the United States Constitution, warranting summary reversal by this Court.

II. Johnson, Whose Monopoly Destroyed Competition, Now Asks This Court To Bless Its Misdeeds In The Name Of "Competition."

Defendants' pious concern for the competitive process (Petition at 7) is laughable. So is their unsupported assertion that the Sixth Circuit decision may prompt competitors to rig bids. Johnson monopolizes the market—it has no need to rig bids! Johnson systematically bought out or ran out nearly every one of its major paving competitors, and has intimidated the remaining few into submission. Johnson now pretends ignorance of "whether its low bid, submitted in full compliance with the letter and spirit of competitive bid statutes, will be treated by the courts as aggressive competition or monopolizing conduct" (Petition at 8). To answer that question, Johnson need only look at the record:

- *if* Johnson's low bid is subsidized by exacting monopolistic prices from its bidding competitors for the raw materials that must be included in the bid (*e.g.*, JA 2664-67, 2845-51; TR 2898-2901; 3358-64);

- *if* Johnson's CEO Kirkby tells his competitors not to bid in his "territory" *or else,* and engages in other similar intimidation (*e.g.,* JA 1149, 1861, 3116-18; TR 780, 1818, 3745-49);
- *if* Johnson bids 90% to 100% of all contracts let (PX 147S); and
- *if* it has gained its extraordinary market shares (75-85% of the Turnpike market, PX 69, 69SA, 69C, and 58% of OTC/ODOT market over thirteen years (PX 71A, C) by thirteen acquisitions of competitors (PX 3),

then Johnson can be assured that its "low bid"[9] is *not* simply "aggressive competition," but "monopolistic conduct."

In general, competitive bidding may be "competition at its purest" (Petition at 8), but there was nothing "pure" about the way Johnson built its monopoly and then wielded the power to control the market. As the Sixth Circuit recognized on both appeals:

> "Substantial evidence indicated that Kirkby, both individually and as chief officer of Johnson, intended to eliminate competition and dominate the market *** [and that] Johnson's acquisitions significantly reduced competition and increased market concentration thereby creating a monopolistic market structure."

729 F.2d at 1054; 917 F.2d at 1471-18; A-68.

[9] Johnson's claim that its "low" bidding benefits the taxpayers is fraudulent. For over thirteen years, Johnson maintained high, rigid and non-competitive prices for the stone and sand it sold to its competitors or included in its asphalt bids, thereby charging the state and Turnpike authorities monopolistic prices for the materials included in its "low" bids. Defendants realized 100% gross margins at their biggest quarries (PX 106SAA-106SDD). Thus, they were able to leverage and cross-subsidize their paving bids, which plaintiffs' experts found to be anticompetitive (JA 2659-67, 2674, 2485-51; TR 2893-2901, 2908, 3358-64).

III. Johnson's Monopoly Power Is Even Greater Under The Alternative Test It Proposes.

Johnson criticizes the use of market share data to measure monopoly power in a bid market, proposing instead the approach endorsed in the ABA Antitrust Section Monograph 12, *Horizontal Mergers:* Law and Policy (1986) p. 159 and by the Justice Department, which assigns an equal share to each firm in the market (Petition at 10-11). The Monograph states (p. 159):

> If this approach is to be applicable, each 'qualified bidder' should have capacity that is large relative to the size of the market or can be easily expanded, such that each can bid on most every job. Where this condition is not satisfied, actual capacity may be a more appropriate measure of a firm's competitive significance.

Similarly, the Justice Department assigns equal market shares to bidding firms only "[i]f each . . . is a comparable participant in the market" (53 Fed. Reg. 21584, 21603, cited at Petition at p. 11).

Capacity in this case was measured by ODOT Qualification certificates. Firms that wish to bid in the coming year submit financial information to the State of Ohio, which issues certificates limiting the dollar amount of work that a firm may have in progress at any given time (*e.g.*, Johnson's and Langenderfer's most recent certificates, PX 9H, 68A2, JA 4103, 4219, attached).

The ODOT Qualification certificates told a dramatic story in this case (PX 68SB, attached). While Johnson's capacity to bid soared from $13 million in 1970 to $106 million by 1986, the capacity of those competitors who managed to keep bidding at all declined or stayed the same (with one exception, Miller, who still had only one third of Johnson's capacity, and whose financial strength

came largely from earth moving and coal, not asphalt paving). There was no comparability between Johnson and its pitiful "competitors." They could "bid" but they could not compete. By 1984, Johnson had 87% of the net worth in the market; 71% of the assets; 64% of the sales; and 91% of the net profit (PX 116B).

Johnson's petition is superfluous on this issue in any event, because the jury fully considered Johnson's argument, and by its findings (Ans. to Itg. 8, A79) must be presumed to have rejected it. The jury was instructed as follows (JA 207-08, 216):

> You have heard much evidence about the market shares of the parties in this case. Market share is one factor in deciding whether a firm possesses monopoly power. Generally, market share alone is not enough to determine the capacity to achieve monopoly. However, existence of monopoly may be inferred from a predominant share of the relevant market.
>
> If a company has less than 50% of the business in the relevant market, that may indicate that the company lacks monopoly power. In some cases, as a company's percent of the market in the relevant market increases, market share may take on more significance as evidence. *However, market share is not always a good indicator of the power of a firm to raise prices. You may also consider the fact that ODOT and OTC paving jobs are awarded through competitive bidding and the low bidder wins.*
>
> Monopoly power is the power of a single firm to control prices or exclude competition. For purposes of this case, you are to treat defendants as a single firm. In determining whether defendants have monopoly power, you may consider not only defendants' market share, but also the market share in the relevant markets of defendants' competitors wherever they are based, the number, strength, and

> size of competitors, *and the likelihood that new competitors would enter the market* if defendants were to attempt to raise prices. You may also consider defendants' size, but size in and of itself is not prohibited by the antitrust laws.
>
> * * *
>
> If the acquisitions made defendants more efficient or lowered their costs, that by itself is not forbidden by the antitrust laws. If, however, the acquisitions eliminated rivals and gave defendants the power to exclude other competitors through anticompetitive conduct, then that is forbidden.

(Emphasis supplied).

Johnson also argues (with no record support) that "wide swings in market share" prevent a finding of monopoly power (Petition at 11). From 1972-1985, Johnson's share of the Turnpike market was 75% to 85%; its average was 58% for OTC/ODOT combined over the same period. It took what it wanted. For example, it had 66.4% of all paving contracts over $1 million between 1979 and 1985 (PX 72B). Monopoly power is the power to control prices or exclude competition *when it is desired to do so. American Tobacco Co. v. United States,* 328 U.S. 781, 810 (1946). In 1974, the year in which Johnson's Turnpike (OTC) market share was zero, that was because there were *no jobs let by the Turnpike*! (PX 69SA). Instead, Johnson took 82% of the *entire* ODOT market (PX 70; JA 4251).

Johnson erroneously relies on *National Reporting Co. v. Alderson Reporting Co.*, 763 F.2d 1020 (8th Cir. 1985) for the proposition that a bidder could not have monopoly power because it could not raise prices and still win an annual exclusive contract. *National Reporting* is not at all factually similar to this case. In

National Reporting there was no evidence, as there was in this case, that the defendant acquired market power through thirteen acquisitions with intent to dominate the market; that defendant's competitors depended on it for raw materials; that the defendant overcharged for those materials, driving up the costs of its smaller competitors; of high barriers to entry; of a shrinking pool of competitors; or that the defendant intimated competitors to discourage them from bidding.

The *Cargill* and *Matsushita* cases (Petition at 13) might have some relevance if the evidence in this case had shown market entry or no barriers to entry, but of course just the opposite was true as plaintiffs' experts testified (JA 2644-52, TR 2878-86; JA 2837-41, TR 3350-54). See also PX 16, showing the six firms that left the market after Johnson's acquisitions. Furthermore, *Matsushita* did not involve an integrated monopolist charging its competitors monopolistic "in-put" prices for essential materials to leverage and cross-subsidize low bidding in the end market as was shown here. *See* fn. 9 *supra.*

IV. The Sixth Circuit Correctly Held That Plaintiff Langenderfer Suffered Antitrust Injury.

Johnson argues that plaintiffs did not suffer "antitrust injury" as defined in *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 at 489: "that is to say injury of the type the antitrust laws were intended to prevent and that flows from that which made defendants' acts unlawful." *Id. See also Cargill Inc. v. Monfort of Colorado, Inc.*, 479 U.S. 104, 113 (1986).

The Sixth Circuit has twice addressed the question of antitrust injury in these cases. In *Langenderfer I*, it held:

> . . . *Brunswick* requires that Langenderfer's injury result either from a lessening of competition due to the acquisitions or from 'anticompetitive acts made possible' by the acquisitions . . . [t]he issue of whether Langenderfer's injuries resulted from 'anticompetitive acts made possible' by the acquisitions *was properly a jury question.*

729 F.2d at 1058-1059 (emphasis added). This was the law of the case, which the trial court explicitly followed in its opinion denying defendants' *j.n.o.v.* motion on the issue of antitrust injury (A93-94).

In *Langenderfer II,* the Sixth Circuit adhered to its earlier holding and accepted the second jury's determination as to Langenderfer (917 F.2d at 1443, A60):

> Langenderfer has, we believe, made a sufficient factual showing to support the essence of the jury's finding that Langenderfer suffered antitrust injury by reason of defendants' conduct and that such injury resulted in significant part from 'a lessening of competition due to the acquisitions' or from 'anti-competitive acts made possible' by the acquisitions. [citing] *Langenderfer I* at 1058.

In *Axis, S.p.A. v. Micafil, Inc.,* 870 F.2d 1105, 1110 (6th Cir.), *cert. denied,* 110 S. Ct. 83 (1989), the Court of Appeals also commented on *Langenderfer I:*

> In [*Langenderfer*], one of the plaintiff's claims for treble damages was based on the defendant's acquisition of competitors. The plaintiff claimed that the acquisitions eliminated the competitive pressures of the acquired companies, thus permitting the defendant to engage in other monopolistic acts such as unfair pricing, profit squeezing and predatory bidding. We held that this allegation was sufficient to satisfy the *Brunswick*

> requirement of antitrust injury. The injury resulted "from anti-competitive acts made possible by the acquisitions."

(citations omitted). The *Axis* court, citing *Langenderfer I*, then stated that an acquisition itself could be the anticompetitive act that causes antitrust injury (*Id.*) just as the jury below found.

In this case, in the face of a shrinking market, defendants lessened competition by deliberately acquiring viable, profitable ODOT-qualified competitors and strategic natural resources[10] in building their monopoly. Those acquisitions and the resulting monopoly power *enabled them to engage in other anticompetitive acts* which ran two of the plaintiffs out of business and critically injured the others. That is "antitrust injury" directly caused by monopolistic conduct or the term has lost all rational meaning. The facts in *Brunswick* and *Cargill* are clearly distinguishable. In *Brunswick*, the plaintiff complained that defendants' acquisitions of *failing* bowling alleys *maintained competition* that caused plaintiffs to lose profits. In *Cargill*, plaintiffs admitted that the proposed acquisition would *increase* competition. 479 U.S. at 115 (*Langenderfer I*, 729 F.2d 1058). The defendants herein did not object to the district court's jury instructions on this point (Ct.'s Chg. at JA 215-16; TR 4952-53).

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[10] Even the Sixth Circuit noted that "acquisitions by defendants of quarry sites coupled with the use of lengthy non-competition agreements and other circumstances did foreclose production and efficient use of such quarries and limestone by Langenderfer and others as competitors of defendants." (*Langenderfer II*, 917 F.2d at 1433; A61).

In answer to Special Interrogatory No. 10 (A81), the jury found that "[t]he acquisitions were all made to exclude and/or injure competition and increase Johnson's power which he succeeded in doing." That "alone satisfie[d] the requirement of *Brunswick*," 729 F.2d 1058, as the district court found. In denying the defendants' motion for *j.n.o.v.* on antitrust injury the district court reviewed the jury's answer to Interrogatory No. 10 (which as framed by defendants, only asked the jury to "describe *one or more* of the types of anticompetitive conduct . . . as briefly as possible."), and construed the answer to No. 10 as a finding that defendants did engage in anticompetitive conduct as set out in the jury's instructions, thereby reconciling a possible inconsistent interpretation of No. 10 with the general verdict (A94).

Interpreting *Brunswick* and *Cargill*, the Second Circuit recently wrote, "we have little doubt that antitrust injury to a competitor can be found when the market share of the merging firms threatens to be decisive." *R.C. Bigelow v. Unilever*, 867 F.2d 102, 108 (2nd Cir. 1989).

Johnson's discussion of *Atlantic Richfield Co. v. USA Petroleum Co.*, 110 S. Ct. 1884 (1990) (Petition at 13) is not applicable to this case. This Court in *Atlantic Richfield* was concerned with the rule against vertical maximum price-fixing and held that no antitrust injury resulted to a horizontal competitor from violation of that rule. 110 S. Ct. at 1895. Here, Johnson's acquisitions of its and plaintiffs' mutual competitors concentrated power in the hands of a monopolist, who then abused that power, causing plaintiffs' injury. If *Atlantic Richfield* is deemed to govern that situation, this Court will have sanctioned all monopolistic acquisitions of competitors when challenged by other competitors.

CONCLUSION

Johnson's petition misrepresents the evidence and ingenuously asks the Court to protect a monopoly in the name of competition. *Langenderfer II* was retried under the law of the case laid down in *Langenderfer I*. There was no error and certainly no miscarriage of justice except for the Sixth Circuit's reversal of four of the five plaintiffs. The petition should be denied. At the same time, we ask the Court to grant the Petition for Certiorari in Case No. 90-1581 to which Johnson has waived any response.

May 21, 1991

Respectfully submitted,

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BEST AV

AILABLE COPY

STATE OF OHIO

DEPARTMENT OF TRANSPORTATION

Certificate of Qualification

NUMBER
190

ISSUED
March 28, 1977
(Effective 4-1-77)

THIS CERTIFIES that ARTHUR S. LANGENDERFER, INC.
4690 West Bancroft Street, Toledo, Ohio 43615

has filed with the Department of Transportation a Financial Statement and Experience Questionnaire as required under Sections 5525.02 to 5525.09 inclusive of the Revised Code of Ohio, and is hereby qualified to submit bids on State Highway Projects not to exceed $ 3,800,000 less the contractual amount of all uncompleted work including non-highway work under contract at the time of submitting bid.

This Certificate limits the holder to the classification of work indicated below:

( ) Railroad Bridges and Construction Under Railroad Tracks

(X) General Contracting

( ) Paving	( )
( ) Rigid Paving	
( ) Flexible Paving	( )
( ) Low Type Bituminous Wearing Surfaces	
( ) Grading	( )
( ) Drainage Structures	
( ) Highway Bridges	( )

This Certificate is subject to revision if and when a change in the financial condition of the holder is in evidence and becomes invalid after March 31, 1978.

David R. Whan
Transportation Director

Harri P. Long
Administrator
Contractor Qualifications

Form CQ-3 · Rev. 4-73

PLAINTIFF'S EXHIBIT 9-H

STATE OF OHIO

DEPARTMENT OF TRANSPORTATION

Certificate of Qualification

NUMBER
433

ISSUED
April 18, 1986
Effective 5-1-86

THIS CERTIFIES that S.E. JOHNSON COMPANIES, INC.
P.O. Box 29A, Maumee, OH 43537

has filed with the Department of Transportation a Financial Statement and Experience Questionnaire as required under Sections 5525.02 to 5525.09 inclusive of the Revised Code of Ohio, and is hereby qualified to submit bids on State Highway Projects not to exceed $ 106,049,000 less the contractual amount of all uncompleted work including non-highway work under contract at the time of submitting bid.

This Certificate limits the holder to the classification of work indicated below:

(X) General Contracting

( ) Paving ( )
( ) Rigid Paving
( ) Flexible Paving ( )
( ) Low Type Bituminous Wearing Surfaces
( ) Grading ( )
( ) Drainage Structures
( ) Highway Bridges ( )

This Certificate is subject to revision if and when a change in the financial condition of the holder is in evidence and becomes invalid after April 30, 1987

Warren J Smith
Transportation Director

Administrator
Contractor Qualifications

Form CO-3 rev 1-81

SEJ 002977

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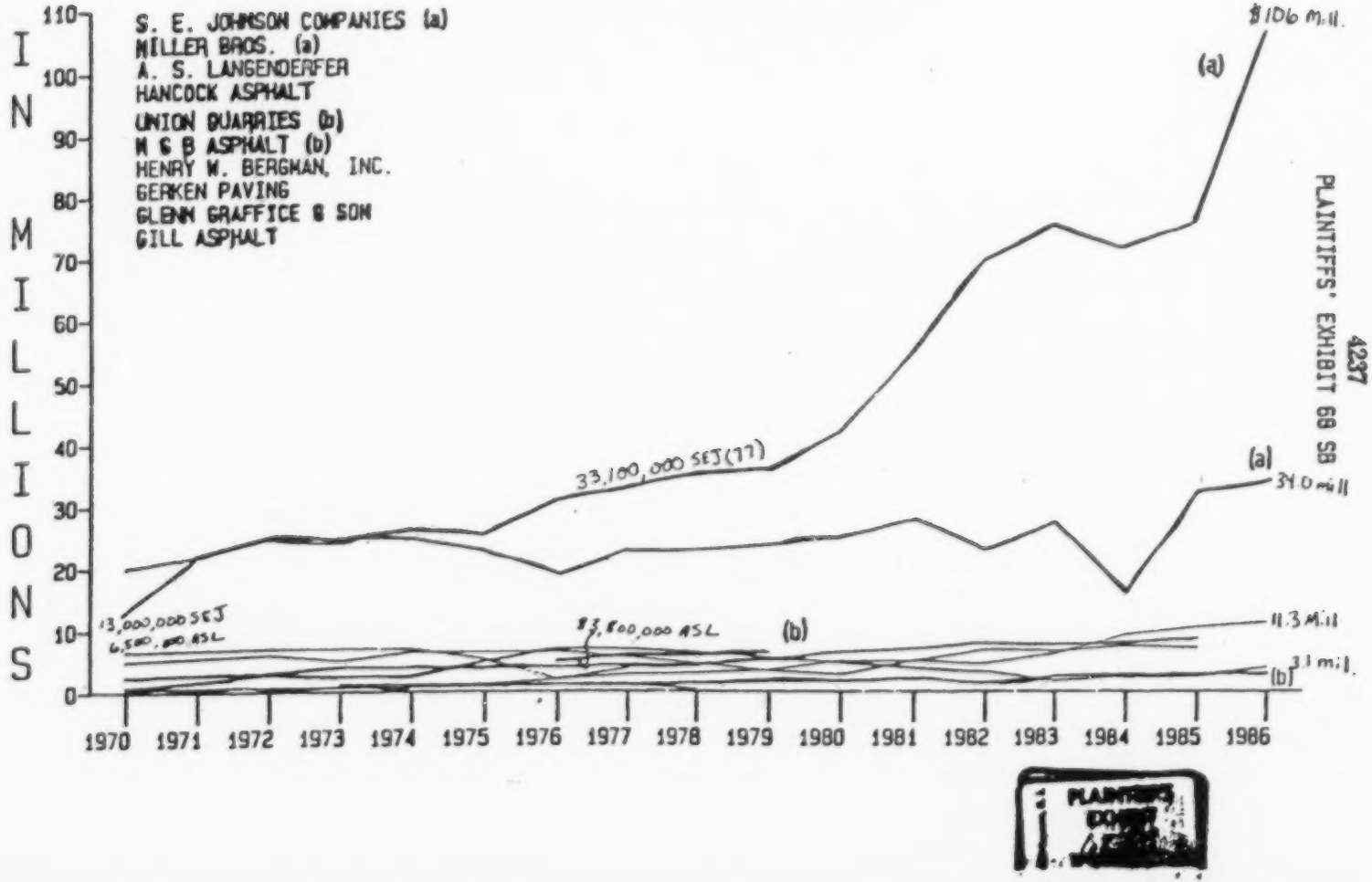
ODOT QUALIFICATION GRAPH



PLAINTIFFS' EXHIBIT 68 SB 4237